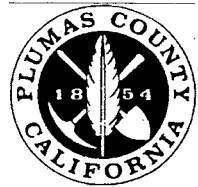


# PLUMAS COUNTY FLOOD CONTROL & WATER CONSERVATION DISTRICT

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April 21, 2010

Katherine Hart, Chair  
Central Valley Regional Water Quality Control Board  
11020 Sun Center Drive, Suite 200  
Rancho Cordova, CA 95670-6114

4/22/10

11:40 AM

## **Re: Basin Plan Amendment for Delta Mercury Control Program**

Dear Chair Hart:

The County of Plumas appreciates the opportunity to submit comments on the Basin Plan Amendment (BPA) for Delta mercury. Plumas County is a headwaters area in the Sacramento River drainage of the Delta watershed. Tributaries to the Delta are not scheduled for direct regulation in Phase 1, but Plumas County representatives have been constructively involved with the BPA stakeholder process in anticipation of the next phase of the program.

The BPA and the Phase 1 program will affect and may determine future phases of the Delta Mercury Control Program, depending on the outcome of the Phase 1 review. Therefore, Plumas County is in the awkward role of being an observer (rather than a participant) in shaping its future destiny. We ask for the Regional Board's consideration of our comments, although, procedurally, they may appear premature. We offer the following comments not to divert the Board's attention from the interests and organizations most directly affected by Phase 1, but because after reading other comments on the BPA and the staff responses, we see a high level of repetition in issues and themes. It is our hope that new perspectives may be helpful at this time.

First, Delta tributary interests need to be provided with public participation opportunities in the proposed Technical Advisory Committee process for the Phase 1 program. Delta tributary interests should also be encouraged to actively participate in the formal review of the Phase 1 program, and specifically in the development of the offsets program for Phase 2. Plumas County believes that an offsets program and early engagement with Delta tributary interests is essential for addressing the significant disconnect between the Delta Mercury Control Program and other initiatives from the State and Regional Water Boards.

As we discuss below, the Delta Flows process and the 401 Certification process for hydroelectric projects licensed by the Federal Energy Regulatory Commission (FERC) are two State Board undertakings that could be at cross purposes with – or even on a collision course with – this BPA.

Second, the Regional Board should seek to take advantage of an important funding opportunity for the Delta Mercury Control Program. The Proposition 84 Integrated Regional Water Management program administered by the Department of Water Resources (DWR) could provide significant funding for collaborative planning on mercury control studies and for pilot-testing of promising BMP or BAT projects for inorganic mercury and methylmercury reduction.

Supporting an inclusive stakeholder process aimed at a broader dissemination of Phase 1 control study and pilot testing results would also seem to be eligible planning activities under the Proposition 84 IRWM program. In particular, the remaining \$25,000 in IRWM interregional planning funds could be prioritized for ensuring that disadvantaged communities (DACs) and tribal representatives have the financial resources to maintain their involvement in the development of regional or statewide mercury exposure reduction strategies.

Ten percent of the \$100 million in Proposition 84 IRWM implementation funds and 10 percent of the \$39 million in IRWM Planning grants that are set aside for projects that benefits DACs could also be important for piloting effective exposure reduction projects and programs during the initial phases of the Delta Mercury Control Program. These are only two examples of many potentially positive outcomes from successful Proposition 84 grant awards in support of the Delta Mercury Reduction Program.

DWR and the Water Boards need to work together to continue to ensure that a portion of the earmarked interregional IRWM funds (such as the 08-09 appropriation for the CALFED Science Program) and upcoming IRWM appropriations for the Delta Plan are dedicated to supporting high priority pilot projects for nonpoint-source mercury reduction in the Delta watershed.

We specifically mention the IRWM earmark for the Delta Plan because the mandated Delta Flow criteria have the potential for direct conflict with Phase 1 of the BPA. The State Board recently convened a workshop with multiple panels of experts to further discuss Delta flow recommendations that were submitted by interested parties, including representatives from agencies and organizations that have been active in the stakeholder process for the BPA. The Yolo Bypass, Cache Creek Slough area, and the lower Cosumnes River were mentioned over 200 times in expert presentations in the Delta Flow proceedings.

For example, the Delta Solutions Group from U.C. Davis made the following recommendation regarding freshwater flows and the maintenance of desirable fish, which reflects the general sentiments of the testifying fisheries experts:

The Yolo Bypass could be at least partially flooded in most years as it and similar floodplains would have done under pre-development conditions. In normal to dry years, a 150-200m fringe along the Toe Drain would flood continuously every year, for 4-8 weeks, mid February through mid April. In wet years, more of the bypass would flood for longer periods. To attract juvenile salmon down the bypass, and to reduce the effects of a peripheral conveyance intake in the Hood area, much of the river might be diverted down the bypass.

The recommendations from the Delta Solutions Group also include dedicating a minimum of 650,000 acre-feet annually to flooding the Yolo Bypass and acknowledging the value of habitat variability and complexity provided by the Yolo Bypass, Cache Slough, and the Cosumnes River.

The Regional Board should request further guidance from the State Board on how the BPA will be integrated with the Delta Flow criteria. The Basin Plan does list the State Board as

responsible for looking at the impacts of water rights permits on methylmercury production. However, this action alone may not be enough if the Yolo Bypass, Cache Creek, and Cosumnes systems are being proposed, essentially, as mitigation areas for the Delta Plan and specifically for a new peripheral conveyance facility.

At a minimum, the costs associated with increased methylation in the Phase 1 area for the Delta Mercury Control Program need to be fully mitigated (for both dischargers and subsistence fishing families) by the export water interests that will benefit from the new intake structure at Hood and the upstream reservoir releases that will be needed for downstream “floodplain activation” in Phase 1 areas of the Yolo Bypass, Cache Creek, and Cosumnes River that are already impaired by mercury-laden sediments. Impaired areas and beneficial uses that will be regulated in future TMDLs and phases of the Delta Mercury Reduction Program also need to be supported in their mercury reduction efforts through the Delta Plan if new Delta flows increase methylmercury production and exposure for wildlife and humans.

The Delta Flow proceedings have elicited comments from fishery experts that flows required in 401 Certifications by the State Board for FERC hydroelectric relicensings in the Delta watershed are inadequate for the flow migration cues and Delta outflows that may be needed from rim reservoirs to sustain endangered Delta fisheries. As the California Department of Fish and Game noted in their February 2010 testimony on the Delta Flow criteria and protection of public trust resources:

Given the recent low storage levels in Shasta, Oroville, and Folsom Reservoirs, providing suitable water temperature through the summer and fall for spawning and rearing salmon and steelhead is very challenging. If the coldwater pool in these reservoirs is not managed carefully, river miles below these dams with water temperatures suitable for salmon production and rearing will be diminished. At the worst running out of cold water before the end of summer could result in extensive temperature-related mortality. Finding a balance between retaining water in project reservoirs or releasing it to meet outflow objectives in late winter through spring is essential.

As the Regional Board staff noted in responding to DWR comments:

Changes in water residence time in Delta channels that result from changes in diversion points of major water projects and other water management activities could influence methylmercury production and losses in the Delta. These changes in water management should not occur without consideration of their impact on methylmercury levels in the Delta.

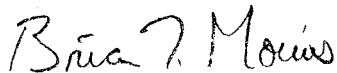
The vast majority of California’s 300 hydropower dams (80%) are regulated through 30 to 50 year licenses issued by FERC, and many are currently in relicensing or soon will be (see attached map). The State Board issues section 401 Water Quality Certifications that impose operating conditions on these FERC licenses to protect water quality. Although a number of these 401 Certifications will be issued by the State Board for water bodies that are listed as impaired for mercury contamination during Phase 1 of the Delta Mercury Control Program, there is no

requirement in the BPA for the State Board or the Regional Board to work together to integrate the 401 Certification process with the Delta Mercury Control Program.

The draft Control Studies Guidance in the Adaptive Management Framework document that will be developed during Phase 1 of the BPA includes questions for "new projects" could easily be adapted to a checklist for 401 Certifications for 303(d)-listed, mercury-impaired water bodies. Alternatively, all 401 Certifications issued for hydroelectric licenses with a significant connection to mercury-impaired water bodies in the Delta watershed could include a mercury TMDL reopener that ensures that 401 Certifications are not at cross purposes with the objectives of the Delta Mercury Control Program. Plumas County requests that the Regional Board seek specific guidance from the State Board on how the FERC 401 Certification process will be integrated with the Delta Mercury Control Program in the tributaries of the Delta watershed.

Thank you for the opportunity to provide comments. If you have questions please do not hesitate to contact me at (530) 283-6243 or at [brianmorris@countyofplumas.com](mailto:brianmorris@countyofplumas.com).

Sincerely,

A handwritten signature in cursive script that reads "Brian L. Morris".

Brian L. Morris

General Manager, Plumas County Flood Control and Water Conservation District  
Acting County Counsel, County of Plumas

# FERC Hydro Project Licenses Expiring: 1993-2010 California

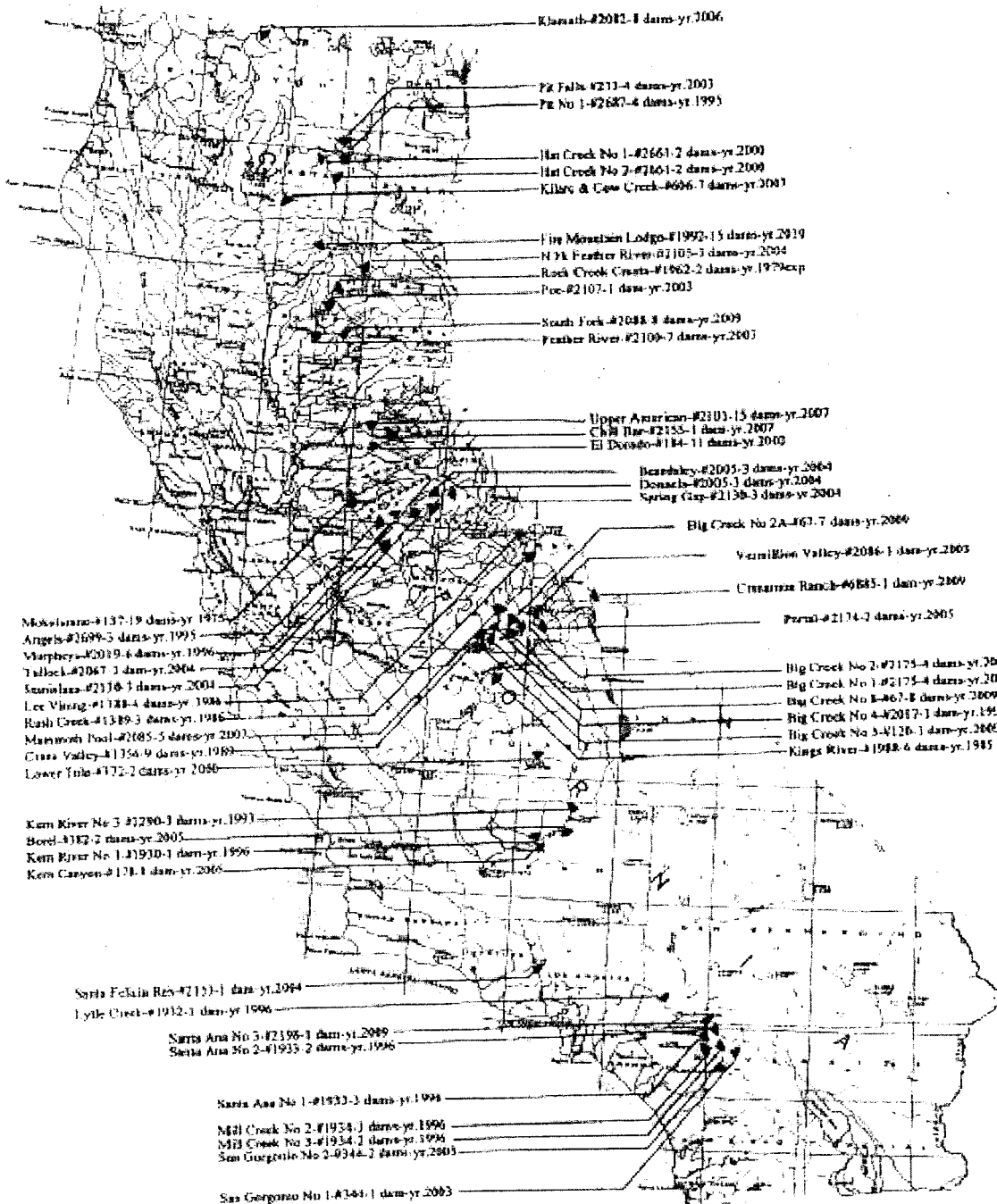


Figure 4.1: Expiring Licenses (California Hydropower Reform Coalition) [www.calhrc.org](http://www.calhrc.org)

Table 2 - Proposition 84 IRWM Implementation Funding

Column A	Column B	Column C	Column D
Funding Area	Prop 84 Schedule	Anticipated Allocation Schedule for This Grant Cycle	Maximum First Round Allocation <sup>1</sup>
North Coast	\$37,000,000	\$4,111,111	\$8,222,222
San Francisco Bay	\$138,000,000	\$15,333,333	\$30,666,667
Central Coast	\$52,000,000	\$5,777,778	\$11,555,556
Los Angeles-Ventura	\$215,000,000	\$23,888,889	\$47,777,778
Santa Ana	\$114,000,000	\$12,666,667	\$25,333,333
San Diego	\$91,000,000	\$10,111,111	\$20,222,222
Sacramento River	\$73,000,000	\$8,111,111	\$16,222,222
San Joaquin River	\$57,000,000	\$6,333,333	\$12,666,667
Tulare/Kern (Tulare Lake)	\$60,000,000	\$6,666,667	\$13,333,333
Lahontan	\$27,000,000	\$3,000,000	\$6,000,000
Colorado River Basin	\$36,000,000	\$4,000,000	\$8,000,000
<b>Total</b>	<b>\$900,000,000</b>	<b>Less than or equal to \$100,000,000</b>	<b>Less than or equal to \$100,000,000</b>

### Funding Match

For Proposition 84 IRWM Implementation funding, minimum funding match is 25% of the total cost of the proposal. For projects that address a critical water supply or water quality need for a DAC, the funding match may be waived. See instructions for Attachment 11 and Exhibit F for more information on applying for a funding match waiver.

## IV. SCHEDULE

The schedule below (Table 3) shows the program timeline from release of the Final Grant Program Guidelines and PSP through final approval of awards. Updates for the events listed in this schedule may be required. When finalized, an updated schedule will be posted on the DWR website listed in the Foreword of the Final Grant Guidelines. Stakeholders will also be notified via email. Updates may also be advertised through fliers, e-mail announcements, and news releases.

Verification that the IRWM Plan has been adopted and  
 Verification that the IRWM Plan addresses all the plan standards as listed in the Guidelines.

Table 1 - 2009 RAP Decisions		
Regional Water Management Group	Region Acceptance	IRWM Plan Adopted by 09/30/2008
<b>North Coast Funding Area</b>		
North Coast	Approved Region	Yes
<b>San Francisco Bay Funding Area</b>		
San Francisco Bay Area	Approved Region	Yes
<b>Central Coast Funding Area</b>		
Greater Monterey County	Approved Region	Yes
Monterey Peninsula, Carmel Bay & South Monterey Bay	Approved Region	Yes
Pajaro River Watershed	Approved Region	Yes
San Luis Obispo County	Approved Region	Yes
Santa Barbara County	Approved Region	Yes
Santa Cruz County	Approved Region	Yes
<b>Los Angeles-Ventura Funding Area</b>		
Gateway	Approved Region	No
Greater Los Angeles County	Approved Region	Yes
Upper Santa Clara River	Approved Region	Yes
Watersheds Coalition of Ventura County	Approved Region	Yes
<b>Lahontan Funding Area</b>		
Antelope Valley	Approved Region	Yes
Inyo-Mono	Approved Region	No
Tahoe Sierra	Approved Region	Yes
<b>Santa Ana Funding Area</b>		
Santa Ana Watershed Project Authority	Approved Region	Yes
<b>Colorado River Funding Area</b>		
Borrego Valley	Approved Region	No
Coachella Valley	Approved Region	No
Imperial Valley	Approved Region	No
<b>San Diego Funding Area</b>		
San Diego	Approved Region	Yes
South Orange County Watershed Management Area	Approved Region	Yes
Upper Santa Margarita	Approved Region	Yes

Table 1 - 2009 RAP Decisions		
Regional Water Management Group	Region Acceptance	IRWM Plan Adopted by 09/30/2008
<b>Sacramento River Funding Area</b>		
American River Basin	Approved Region	Yes
Cosumnes American Bear Yuba	Approved Region	Yes
Sacramento Valley	Conditionally Approved	Yes
Upper Feather River Watershed	Approved Region	Yes
Upper Pit River Watershed	Approved Region	No
Upper Sacramento-McCloud	Approved Region	No
Westside-Sacramento	Approved Region	Yes
Yuba County	Approved Region	Yes
<b>San Joaquin Funding Area</b>		
East Contra Costa County	Approved Region	Yes
Eastern San Joaquin	Approved Region	Yes
Madera	Conditionally Approved	Yes
Mokelumne-Amador-Calaveras	Approved Region	Yes
Tuolumne-Stanislaus	Approved Region	No
<b>Tulare-Kern Funding Area</b>		
Kaweah River Basin	Conditionally Approved	Yes
Poso Creek	Conditionally Approved	Yes
Upper Kings Basin Water Forum	Approved Region	Yes
<b>Trans-San Joaquin-Tulare/Kern Funding Area</b>		
Westside-San Joaquin	Approved Region	Yes
<b>Trans-Colorado-Lahontan Funding Area</b>		
Mojave	Approved Region	Yes